Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

DR. ROBERT V. JUSTICE,
Petitioner
v.
JUDITH McCONNELL
Respondent

On Petition for Writ of Certiorari
To The Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a prefiling review period of over 100 days under a federal vexatious litigant injunction violates the right of court access under the First Amendment and due process under the Fourteenth Amendment-Section 1.

2. Whether *Rooker-Feldman* bars a federal civil rights action based on claims arising from discriminatory enforcement of a state court order, but not the state court order itself.

PARTIES TO THE PROCEEDING

Petitioner is Dr. Robert V. Justice, who was the Plaintiff-Appellant below.

Respondents are Defendants-Appellees Mr. Ronald George, Chief Justice of the California Supreme Court; Ms. Judith McConnell, Administrative Presiding Justice of the Court of Appeal-Fourth Appellate District-Division One in California and Ms. Natalie Robinson, Supervising Clerk of the California Supreme Court-Los Angeles.

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DECISIONS BELOW

The decision of the United States Court of Appeals for the Ninth Circuit is reprinted in the Appendix at A. The decision of the United States District Court for the Southern District of California is reprinted in the Appendix at B.

JURISDICTION

The order of the court of appeals was entered on January 19, 2010. This court has jurisdiction under Title 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS

The First Amendment provides: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Fourteenth Amendment-Section 1 provides: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This petition seeks the review of an order from the Court of Appeals for the Ninth Circuit refusing to hear an appeal brought by Petitioner Dr. Robert V. Justice ("Petitioner Dr. Justice") on the basis that the issues on the

subject appeal were so insubstantial and not worthy of the time of the Court of Appeals for the Ninth Circuit.

Petitioner Dr. Justice had filed a federal civil rights action in the United States District Court for the Southern District of California alleging that Petitioner Dr. Justice was being subjected to discriminatory enforcement of the California Vexatious Litigant Law wherein individuals who had been declared vexatious litigants are required to obtain leave before filing any new litigation in any courts in California. The allegations under the federal civil rights complaint were based on a state appeal that had been dismissed because Petitioner Dr. Justice refused to obtain leave to file said state appeal. Petitioner Dr. Justice refused to obtain leave because another person, also required to obtain leave, was allowed to file numerous appeals in the appellate courts in California without leave. Petitioner Dr. Justice sought to have California Code of Civil Procedure Section 391.7 declared unconstitutional, not the state court order declaring Petitioner Dr. Justice a vexatious litigant. The enforcement of the state vexatious litigant injunction is administered under California Code of Civil Procedure Section 391.7. California Code of Civil Procedure Section 391.7 is reprinted in the Appendix at C.

The United States District Court for the Southern District of California dismissed the federal civil rights action for two reasons. The first reason was that Petitioner Dr. Justice did not obtain leave under a federal vexatious litigant injunction before filing the federal civil rights action and (2) *Rooker-Feldman* bars the claims under the federal civil rights complaint because the injuries stem from the state court order declaring Petitioner Dr. Justice a vexatious litigant and subjecting Petitioner Dr. Justice to a prefiling requirement.

Petitioner Dr. Justice was also declared a federal vexatious litigant under a federal vexatious litigant injunction. The federal vexatious litigant injunction required Petitioner Dr. Justice to obtain leave before filing any litigation in any federal court in the United States.

Petitioner Dr. Justice did not obtain leave to file the subject federal civil rights action because Petitioner Dr. Justice had already experienced a delay of over 100 days when Petitioner Dr. Justice submitted leave to file an unrelated civil action in the federal court several years prior. The United States District Court for the Southern District of California erred when it dismissed the instant federal civil rights action based on the premise that Petitioner Dr. Justice was required to obtain leave before filing the federal civil rights action even though the prefiling review period took over 100 days. The Court of Appeals for the Ninth Circuit held in *Moy v. United States* (9th Cir. 1990) 906 F.2d 467, 470 that: "On the other hand, we recognize that the purpose and effect of the order is to pass a special rule directed specifically to appellant himself. Among all other citizens, he is to be restricted in his right of access to the courts. As far as he is concerned, his future filings run the risk of delay and even possible rejection before he can call upon defendants to respond to those filings. He will not even be permitted to enter the lists until a judicial officer gives him permission. That would, under the order before us, apply to any action he chooses to file. We cannot predict what harm might come to him as a result, and he should not be forced to predict it either. What he does know is that a Sword of Damocles hangs over his hopes for federal access for the foreseeable future."

The United States District Court for the Southern District of California further erred when it dismissed the federal civil rights action based on the premise that *Rooker-Feldman* barred the claims asserted under the federal civil rights complaint because Petitioner Dr. Justice's injury arose from the state vexatious litigant injunction. This is not the case. This court already addressed this issue in *Exxon Mobil Corporation v. Saudi Basic Industries Corporation* (2005) 544 U.S. 280, 293 when it held that *Rooker-Feldman* and this court's appellate jurisdiction over state court judgments does not stop district court from exercising subject matter jurisdiction simply because a

party attempts to litigate in federal court a matter previously litigated in state court; if federal plaintiff presents some independent claim, albeit one that denies a legal conclusion that the state court has reached in the case to which he was a party, then there is jurisdiction and state law determines whether defendant prevails under principles of preclusion.

The Court of Appeals for the Second Circuit held in *Hoblock v. Alabany County Board of Elections* (2005) 422 F.3d 77, 87 that: "On the other hand, we know that an 'independent' (and therefore non-barred) claim may 'deny a legal conclusion'" reached by the state court. *Exxon Mobil*, 544 U.S. ···, 125 S.Ct. at 1527 (quoting *GASH Assocs.*, 995 F.2d at 728). Precisely what this means is not clear from either *Exxon Mobil* or *GASH Associates* (the original source of the language), but it suggests that a plaintiff who seeks in federal court a result opposed to the one he achieved in state court does not, for that reason alone, run afoul of *Rooker-Feldman*."

The United States District Court for the Eastern District of Virginia of the Alexandria Division held in *Field Auto City, Inc. v. General Motors Corporation* (2007) 476 F.Supp.2d 545, 553-554: "In any event, this issue is not, in the end, dispositive of the *Rooker-Feldman* question. The next and more difficult *Rooker-Feldman* requirement to resolve is whether the injury complained of here is one caused by the state court judgment. The Supreme Court stated that mere litigation of issues decided by the state court is not necessarily an injury "caused" by the state court judgment. *Exxon Mobil*, 544 U.S. at 293, 125 S.Ct. 1517. Although *Exxon Mobil* did not elaborate further on this requirement, *Hoblock* again provides useful guidance. There, the Second Circuit illuminated this requirement by contrasting two hypotheticals. In the first hypothetical, a state court order terminates a father's parental rights and orders the state to take custody of his son. It is clear in this case that a father complains of an injury caused by the state court judgment when he sues in federal court

claiming this order violates his substantive due process rights as a parent. *Rooker-Feldman* therefore would bar the federal suit. In the second hypothetical case, an employee sues his employer in state court raising claims under both state and federal anti-discrimination law. If he loses in state court and then sues again in federal court asserting the same facts and legal theories, he is claiming injury from the defendant's conduct, not from a state court judgment. *Hoblock*, 422 F.3d at 87-88. Thus, Rooker-Feldman would not apply."

The Court of Appeals for the Ninth Circuit held in *Carmona v. Carmona* (2008) 544 F.3d 988, 995 that: "We have previously explained how federal courts should distinguish a forbidden de facto appeal of a state court decision that is barred by *Rooker-Feldman* from a suit that is barred by other preclusion principles. A suit brought in federal district court is a "de facto appeal" forbidden by *Rooker-Feldman* when "a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision." Id. at 1164. In contrast, if a plaintiff "asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction." Id."

The Court of Appeals for the Ninth Circuit further held in *Carmona v. Carmona* (2008) 544 F.3d 988, 996 that: "Like Feldman, Janis did not argue that either Judy or Hilton caused her injury, claims that would be within the limits of *Rooker-Feldman*. See *Noel*, 341 F.3d at 1163. Rather, Janis complained of a harm caused by a state court judgment that directly withholds a benefit from her based on an allegedly erroneous ruling by that court." *Id.* Her claim therefore fits within the narrow constraints of the Ninth Circuit's application of the *Rooker-Feldman* doctrine. We agree with the district court that it lacked jurisdiction to hear the merits of Janis's claims against Hilton and Judy because Janis's suit was a forbidden de facto appeal of a state court judgment."

REASONS FOR GRANTING THE PETITION

This court should grant this petition for two reasons: (1) no litigant labeled a federal vexatious litigant should ever have to wait over 100 days to file meritorious litigation and (2) it is clear from the decisions in *Hoblock v. Alabany County Board of Elections* (2005) 422 F.3d 77 from the Court of Appeals for the Second Circuit and *Field Auto City, Inc. v. General Motors Corporation* (2007) 476 F.Supp.2d 545 from the United States District Court for the Eastern District of Virginia of the Alexandria Division that this court decision on *Exxon Mobil Corporation v. Saudi Basic Industries Corporation* (2005) 544 U.S. 280 did not discuss why the mere litigation of issues decided by the state court is not necessarily an injury caused by the state court judgment. Since this court's decision in *Exxon Mobil* in 2005, the only two courts to examine the issue of why litigation of issues decided by a state court judgment is not necessarily an injury caused by a state court judgment warranting application of *Rooker-Feldman* have been unable to implement this court's mandate in *Exxon Mobile* because it was unclear to the lower courts why the mere litigation of issues decided by the state court is not necessarily an injury caused by the state court judgment warranting the application of *Rooker-Feldman*. Granting this petition will provide this court the opportunity to clarify what this court meant when it held that mere litigation of issues decided by the state court is not necessarily an injury caused by the state court judgment warranting the application of *Rooker-Feldman* in *Exxon Mobil*. To the contrary the Court of Appeals for the Ninth Circuit in *Carmona v. Carmona* (2008) 544 F.3d 988 had no problem understanding what this court meant. In this case, the discriminatory enforcement was an act by the Respondents. The state court order did not require Respondents to enforce the prefiling requirement against Petitioner Dr. Justice in a discriminating manner. The United States District Court for the Southern District of

California erred in concluding that it lacked subject matter jurisdiction to entertain Petitioner Dr. Justice's federal civil rights action.

CONCLUSION

For the reasons stated, this Court should grant the petition.

April 16, 2010

Respectfully Submitted,

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APPENDIX A

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT V. JUSTICE, Dr.,

Plaintiff-Appellant,

v.

JUDITH MCCONNELL, Administrative Presiding Justice of the Court of Appeal-Fourth Appellate District-Division One, in her administrative, enforcement and individual capacities; et al.,

Defendants-Appellees.

No. 09-56285

D.C. No. 3:08-CV-01449-LAB

ORDER

Before: SILVERMAN, PAEZ and BEA, Circuit Judges.

A review of the record, appellant's response to the September 15, 2009 order to show cause, and the opening brief demonstrates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooten*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Accordingly, we summarily affirm the district court's judgment.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DR. ROBERT V. JUSTICE,
Plaintiff,

vs.

JUDITH McCONNELL, Administrative Presiding Justice of the Court of Appeal-Fourth Appellate District-Division One, in her administrative, enforcement and individual capacities; et al.,

Defendants.

Case No. 08-CV-1449-LAB (RBB)

ORDER DENYING MOTION TO ALTER OR AMEND THE COURT'S JUDGMENT

I. Statement of the Case

Plaintiff Dr. Robert V. Justice ("Justice") is on the California Vexatious Litigant List, and he is also subject to a pre-filing order under Cal. Civ. Pro. Code § 391.7(a) that requires him to first obtain leave of the presiding judge of any state court in which he wants to file a lawsuit. Justice brought a federal civil rights claim in this Court seeking an injunction preventing Defendants from enforcing the leave requirement, as well as a judgment declaring that the Defendants' enforcement of the Vexatious Litigant Statute against him was discriminatory, unlawful, and illogical. (Pl.'s Compl. 8.) This Court dismissed Justice's claim for two reasons. First, as the Court discovered while considering Defendants' motion to dismiss, Justice has also been declared a vexatious litigant in this Court and is subject to a pre-filing order here too, which he ignored in

bringing this action. See *Justice v. Superior Court of San Diego County*, Case No. 03-cv-1036-J (POR), Dkt. Nos. 69, 107. Second, the Court found it lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine. Justice has now filed a motion to alter or amend the dismissal pursuant to Fed. R. Civ. P. 59(e).

II. Legal Standard

Within the Ninth Circuit and under this Court's Standing Order in Civil Cases, Rule 59(e) motions to alter or amend are disfavored unless the moving party shows that there is new evidence, a change in controlling law, or that the Court committed clear error in the earlier ruling. *United Nat'l Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F.3d 772, 780 (9th Cir. 2009)(citing *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001)); Standing Order 4(j).

Outside of these three scenarios, a motion for reconsideration should not be granted absent highly unusual circumstances. *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)(citing *School Dist. No. 1J v. ACANDS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)). Rule 59(e) offers an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). A Rule 59(e) motion may not be used to raise arguments or present evidence for the first time when those issues could reasonably have been raised earlier in the litigation. *Carroll*, 342 F.3d at 945.

III. Discussion

Justice has moved to alter or amend on the grounds that the court committed a "manifest error of law or fact" in dismissing his cause of action. (Pl.'s Mot. 2.) Justice claims that the Court erred in concluding that he was required to obtain leave to bring this action, and in

concluding that the Court lacked subject matter jurisdiction anyway under the *Rooker-Feldman* doctrine. (Pl.'s Mot. 6).

A. Obtaining Leave to File Litigation

Justice argues first that the Ninth Circuit's ruling in *Moy v. United States*, 906 F.2d 467 (9th Cir. 1990), allows him to disregard the requirement that he obtain leave to file an action in this court because of the 'excessive delay' in processing his leave application. This is an inaccurate representation of the decision in *Moy*. In that case the Ninth Circuit actually upheld the enforcement of a pre-filing order, but restricted it to future litigation the litigant might initiate against the specific defendants involved in the case. Id. at 471. The Court found that while the litigant had filed more than five claims based on the same set of operative facts and "wasted a great deal of the district court's and defendants' time and money attempting to re-litigate claims that the district court has already found cannot be supported by the facts or the law," there was no evidence that the litigant had a general history of litigious filing outside of the one case. Id. at 470-71. Nowhere does the Court indicate in *Moy* that a litigant subject to a pre-filing order can ignore his obligations because he believes that it will take too long to process his application for leave.

B. The Rooker-Feldman Doctrine

"Stated simply, the *Rooker-Feldman* doctrine bars suits 'brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments'." *Carmona v. Carmona*, 544 F.3d 988, 995 (9th Cir. 2008)(quoting *Exxon Mobil Corp. v. Saudi Basic Indust. Corp.*, 544 U.S. 280, 284 (2005)). It also bars actions in federal court that are 'inextricably intertwined' with state actions. *Bianchi v.*

Rylaarsdam, 334 F.3d 895, 899-901 (9th Cir. 2003)(finding constitutional and other federal claims to be 'inextricably intertwined' with the litigant's state claims that had already been denied in state court); *Ignacio v. Judges of United States Court of Appeals for Ninth Circuit*, 453 F.3d 1160, 1165 (9th Cir. 2006)(affirming district court's dismissal of a federal claim attempting to collaterally attack a state court judgment).

Justice argues in his instant motion that it is not the requirement that he obtain leave per se that has violated his constitutional rights, but rather the discriminatory manner in which the Defendants have enforced the requirement against him. (Pl.'s Mot. 6). He claims that the courts have allowed another person, who is involved in unrelated litigation and is also on the Vexatious Litigant List, to file litigation without obtaining leave. (Pl.'s Mot. 6.) As a result, he argues, his instant federal claim is distinct from his state claim, so it should survive *Rooker-Feldman* and be heard in this Court.

The Ninth Circuit, however, has set a much higher standard for determining whether claims like these are in fact distinct. In *Wolfe v. Strankman*, 392 F.3d 358 (9th Cir. 2004), the Court ruled that a challenge to a vexatious litigant statute survived *Rooker-Feldman* only because "there was no state court judgment from which [the plaintiff] could have been seeking relief." Id. at 363. The plaintiff in *Wolfe* sued in federal court claiming that California's Vexatious Litigant Statute was unconstitutional and that the Statute should not be enforced against him. By the time the plaintiff filed his federal claim, however, his name had been removed from the Vexatious Litigant List. In light of this, the Ninth Circuit found that the plaintiff in no way could have been seeking the undoing of a state-court ruling, so no *Rooker-Feldman* problem existed and the claim could be adjudicated in federal court.

Justice's claim is quite different. Although it is a civil rights lawsuit brought on constitutional grounds, the federal claim for relief is still entangled with the already resolved state claim. The relief sought is especially telling. In the state claim, Justice sought the dissolution of the vexatious litigant injunction that the Defendants held against him; in the federal claim, Justice seeks a declaratory judgment stating that the Defendants enforced the Vexatious Litigant Statute against him in a discriminatory manner, and an injunction against the Defendants from enforcing the Statute against him. The relief Justice seeks in federal court would effectively undo the prior ruling of the state court. *Bianchi*, 334 F.3d at 900 ("under *Rooker-Feldman*, we must pay close attention to the relief sought by the federal-court plaintiff"). Unlike *Wolfe*, Justice's case poses a *Rooker-Feldman* problem, which deprives the case of subject matter jurisdiction in this federal court.

IV. Conclusion

Justice's invocation of *Moy* does not relieve him of his obligation under the prefiling order to obtain leave before filing litigation in the California courts. Further, the *Rooker-Feldman* doctrine blocks this case from this federal court. The relief Justice seeks in his federal claim would for all intents and purposes unravel the prior state-court ruling, and as a result this Court lacks subject matter jurisdiction.

IT IS SO ORDERED.

DATED: July 14, 2009

s/Larry A. Burns
HON. LARRY A. BURNS
United State District Judge

APPENDIX C

California Code of Civil Procedure Section 391.7

391.7. (a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3.

(c) The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subdivision (a). The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within 10 days of the filing of that notice obtains an order from the presiding judge permitting the filing of the litigation as set forth in subdivision (b). If the presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of the order.

(d) For purposes of this section, "litigation" includes any petition, application, or motion other than a discovery

motion, in a proceeding under the Family Code or Probate Code, for any order.

(e) The clerk of the court shall provide the Judicial Council a copy of any prefiling orders issued pursuant to subdivision (a). The Judicial Council shall maintain a record of vexatious litigants subject to those prefiling orders and shall annually disseminate a list of those persons to the clerks of the courts of this state.